

FILED

SEP 22 2009
SEP 22 2009

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT**

In re:)	Chapter 11
)	
SENTINEL MANAGEMENT GROUP, INC.)	Case No. 07 B 14987
)	
Debtor.)	Hon. John H. Squires
)	
<u>FREDERICK J. GREDE, not individually but as</u>)	
Liquidation Trustee and Representative of the)	
Estate of Sentinel Management Group, Inc.,)	
)	
Plaintiff,)	
v.)	ADV. NO. 09-00521
)	
UBS SECURITIES, LLC)	
)	
Defendant.)	
)	

MOTION OF UBS SECURITIES, LLC TO WITHDRAW THE REFERENCE

UBS Securities, LLC ("UBS") hereby moves the United States District Court for the Northern District of Illinois ("District Court") for entry of an order withdrawing the reference with respect to this adversary proceeding from the United States Bankruptcy Court for the Northern District of Illinois (the "Bankruptcy Court") to the District Court. In support thereof, UBS respectfully states as follows:

1. The Trustee commenced the above-captioned Adversary Proceeding on June 24, 2009 ("UBS Adversary"). UBS filed its Answer to the Complaint on August 21, 2009.

2. In 2008, the Trustee commenced adversary proceedings (collectively, together with this adversary proceeding, the "Seg 1 Cases") against fourteen other

similarly situated defendants (collectively, together with UBS, the "Seg 1 Defendants" or "Seg 1 FCMs").

3. In the UBS Adversary the Trustee is seeking to recover an allegedly fraudulent conveyance pursuant to 11 U.S.C. § 548. In each of the other Seg 1 cases the Trustee is seeking to recover allegedly preferential transfers pursuant to 11 U.S.C. § 547 and allegedly unauthorized post petition transfers pursuant to 11 U.S.C. § 549. Regardless of whether the Trustee is seeking to recover an alleged preference, fraudulent conveyance or unauthorized post-petition transfer, in each and every Seg 1 Case the court will have to determine whether the transfer the Trustee is seeking to recover constitutes a transfer of property of the Debtor's estate.

4. Withdrawal of the reference from the Bankruptcy Court is mandatory under 28 U.S.C. § 157(d) because the UBS Adversary, similar to each other Seg 1 Case, requires the consideration of open and unresolved issues regarding the interpretation and implementation of Federal, non-bankruptcy securities and commodities law. Specifically, a pivotal issue raised by the complaint filed by the Trustee in each Seg 1 Case, the ownership of customer funds, will be determined based upon the interpretation and implementation of the Commodity Exchange Act, 7 U.S.C. §§1 to 27f *et seq.* (the "CEA"), and the rules and regulations of the Commodities Futures Trading Commission ("CFTC"), 17 C.F.R. §§ 1.10 to 190.10 *et seq.*¹

¹ In each of the Seg 1 Cases, the applicable Seg 1 Defendant moved to withdraw the reference. Through an order of the District Court's Executive Committee, each Seg 1 Case was found to be related to an action pending before the Honorable James B. Zagel, namely, Grede v. The Bank of New York, Docket No. 08 C 2582 (the "BONY Case"). Consequently, each of the Seg 1 Cases was assigned to Judge Zagel under the BONY Case. A copy of the Executive Committee's Orders dated February 20, 2009 and July 17, 2009 are attached hereto as Exhibit 1.

5. The Seg 1 Defendants, including UBS, are futures commission merchants ("FCM") registered with the CFTC. Generally, an FCM is a broker that trades futures contracts for its customers. Customers deposit cash or securities with their FCM broker to serve as margin for the customers' trades. Pursuant to section 6d of the CEA, and the rules and regulations of the CFTC, property deposited by customers with an FCM is the property of the customer that deposited the funds and must be kept segregated from the FCM's own property in a customer segregated account. *See* 7 U.S.C. §§ 6d(a)(2) 6d(b); 17 C.F.R. §§ 1.3(gg), 1.25 and 1.26(a). Sentinel Management Group, Inc., the above captioned debtor ("Sentinel" or the "Debtor"), was registered with the CFTC as an FCM but did not act as a broker for futures contracts. Rather, as a registered FCM, the Debtor was eligible to hold and invest the customer segregated margin deposits for other FCMs.

6. The key issue that must be settled in the Seg 1 Cases, the ownership of customer funds transferred by Sentinel, will turn on the interpretation and application of the CEA and related CFTC regulations. Specifically, resolution of the Seg 1 Cases will require the resolution of two issues of apparent first impression, both of which require withdrawal of the reference: (i) whether section 6d of the CEA and the related CFTC regulations create a statutory trust with respect to margin funds deposited by customers of

<u>Case Name</u>	<u>Adversary Proceeding Docket No.</u>	<u>District Court Docket No.</u>
Grede v. Penson Financial Futures, Inc.	08 A 755	09-cv-101
Grede v. IFX Markets, Inc.	08 A 751	09-cv-115
Grede v. Farr Financial	08 A 749	09-cv-120
Grede v. Cadent Financial	08 A 879	09-cv-127
Grede v. Rand Financial	08 A 880	09-cv-128
Grede v. Country Hedging	08 A 745	09-cv-130
Grede v. Peregrine Financial Group, Inc.	08 A 752	09-cv-134
Grede v. Velocity Futures	08 A 753	09-cv-135
Grede v. FCStone	08 A 754	09-cv-136
Grede v. American National Trading	08 A 744	09-cv-137
Grede v. Fortis Clearing Americas	08 A 743	09-cv-138
Grede v. Crossland LLC	08 A 747	09-cv-140
Grede v. Trademaven Clearing LLC	08 A 965	09-cv-3863

FCMs such that customers' deposits are not property of a bankrupt FCM or related depository, and (ii) whether, under section 6d of the CEA and CFTC Rule 1.20, a transfer of property to a customer segregated account maintained by an FCM to hold its customers' margin deposits is a transfer of property to the FCM itself.

7. The Seg 1 Defendants are aware of no law interpreting the CEA and CFTC regulations in the context of a bankruptcy adversary proceeding or other action to determine property of the estate. Therefore, withdrawal of the reference is mandatory because the Seg 1 Cases require the consideration of open and unresolved issues of Federal, non-bankruptcy law.

8. Alternatively, the District Court should exercise its discretion to withdraw the reference "for cause shown" because of the risk of inconsistent judgments with another adversary proceeding originally brought in Sentinel's bankruptcy case which has already been withdrawn to the District Court: Grede v. The Bank of New York et al., 08-A-00127 (Bankr. N.D. Ill. March 3, 2008). That adversary proceeding involves the exact same legal questions and transactions at issue in the Seg 1 Cases, namely whether transfers made to the Seg 1 Defendants were customer property, or property of Sentinel's bankruptcy estate. Given the similarity of the issues and facts, and the inevitable overlap in discovery, judicial economy favors discretionary withdrawal of the reference. The District Court has also withdrawn the reference in another related proceeding, Grede v. McGladrey & Pullen LLP et al., 08 A 00167 (Bankr. N.D. Ill. March 20, 2008) which involves issues related to the Seg 1 Cases. Due to the District Court's familiarity with the issues in those related proceedings, which involve the same transactions at issue in this

adversary proceeding, the risk of inconsistent judgments, and judicial economy, the District Court should exercise its discretion to withdraw the reference for cause.

9. This risk of inconsistent judgments is very significant and a recent hearing before the Bankruptcy Court demonstrates that the risk is very real. The District Court (Zagel, J.) recently ruled in the BONY Case that the Trustee does not have standing to assert claims assigned to him by certain Sentinel customers (the "Settling Customers") pursuant to Sentinel's Fourth Amended Plan of Liquidation (the "Plan"). See Grede v. The Bank of New York et al., 2009 WL 2244605 *6 (N.D. Ill July 28, 2009). Addressing the exact same issue in the Seg 1 Cases, Judge Squires in the Bankruptcy Court declined to follow Judge Zagel's ruling and held that the Trustee does have standing to bring claims assigned to him by the Settling Customers under the Plan. See *Transcript of Proceedings Before the Honorable John H. Squires* in Case No. 07 B 14987, dated September 1, 2009, at pp 5-6, a copy of which is attached to UBS's Memorandum in Support as Exhibit B.

10. At this stage in the litigation of these related cases, we now have rulings on the same issue that are directly contrary. The Bankruptcy Court's contrary ruling will now require the defendants in the Seg 1 Cases to expend additional time and effort defending claims the District Court dismissed on standing grounds. Allowing two courts to address the same legal and factual issues will lead to more inconsistent rulings that will prejudice the litigants.

11. In addition, the District Court should withdraw the reference to the Bankruptcy Court because UBS is entitled to a jury trial and has not consented to the

conduct of such trial by the Bankruptcy Court. If a party has the right to a jury trial and does not consent to a jury trial before the bankruptcy judge, cause for withdrawal exists.

12. In further support of its motion to withdraw the reference, UBS has filed a Memorandum of Law in support of its motion to withdraw the reference. The memorandum is substantially similar to the memorandum filed by the other Seg 1 Defendants.

WHEREFORE, UBS respectfully requests that the District Court enter an Order withdrawing the reference of this action from the Bankruptcy Court and granting such additional relief as the District Court deems just or appropriate.

Dated: September 18, 2009

Respectfully submitted,

UBS SECURITIES, LLC

By: /s/ Michael K. Desmond
One of Its Attorneys

Local Counsel for UBS Securities, LLC.

Peter A. Silverman (#6196081)
Michael K. Desmond (#6208809)
Figliulo & Silverman
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Fax: (516) 741-6706

CERTIFICATE OF SERVICE

The undersigned attorney states that he caused a copy of the attached

MOTION OF UBS SECURITIES, LLC TO WITHDRAW THE REFERENCE

To be served upon counsel listed below via Electronic Notification by the District Court's ECF Filing System on September 18, 2009.

/s/ Michael K. Desmond

COUNSEL:

Catherine L. Steege
Chris C. Gair
Vincent E. Lazar
Jenner & Block LLP
330 N. Wabash Ave.
Chicago, IL 60611

EXHIBIT 1

**United States District Court
Northern District of Illinois**

*Judge
Zagel*

CU

In the Matter of

FREDERICK J. GREDE

v.

Case No. 09 C 101

PENSON FINANCIAL FUTURES,
ET AL

Designated Magistrate Judge
Arlander Keys Schenkier

**FINDING OF RELATEDNESS PURSUANT TO
LOCAL RULE 40.4**

In accordance with the provisions of Local Rule 40.4 of this Court, I find the above captioned case, presently pending on the calendar of Judge **Matthew F. Kennelly** to be related to 08 C 2582 which is pending on my calendar. Accordingly, I request that the Executive Committee order said case to be reassigned to my calendar as a related case.

James B. Zagel
Judge James B. Zagel

Dated: February 19, 2009

ORDER OF THE EXECUTIVE COMMITTEE

IT IS HEREBY ORDERED that the above captioned case be reassigned to the calendar of Judge **James B. Zagel**.

ENTER

FOR THE EXECUTIVE COMMITTEE

James F. Holderman
Chief Judge James F. Holderman

Dated: **FEB 20 2009**

2009 FEB 20 PM 3:47
U.S. DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

**United States District Court
Northern District of Illinois**

*Judge
Zagel* *CH*

In the Matter of

FREDERICK J. GREDE

v.

Case No. 09 C 115

IFX MARKETS, ET AL

Designated Magistrate Judge
Arlander Keys Schenkier

**FINDING OF RELATEDNESS PURSUANT TO
LOCAL RULE 40.4**

In accordance with the provisions of Local Rule 40.4 of this Court, I find the above captioned case, presently pending on the calendar of Judge Matthew F. Kennelly to be related to 08 C 2582 which is pending on my calendar. Accordingly, I request that the Executive Committee order said case to be reassigned to my calendar as a related case.

James B. Zagel

Judge James B. Zagel

Dated: February 19, 2009

ORDER OF THE EXECUTIVE COMMITTEE

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ENTER

FOR THE EXECUTIVE COMMITTEE

James F. Holdeman

Chief Judge James F. Holdeman

Dated: FEB 20 2009

2009 FEB 20 PM 3:47
U.S. DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

**United States District Court
Northern District of Illinois**

*Judge
Zagel* *Ch*

In the Matter of

FREDERICK J. GREDE

v.

VELOCITY FUTURES, LP

Case No. 09 C 135

Designated Magistrate Judge
Arthur Keyes Schenkier

**FINDING OF RELATEDNESS PURSUANT TO
LOCAL RULE 40.4**

In accordance with the provisions of Local Rule 40.4 of this Court, I find the above captioned case, presently pending on the calendar of Judge Matthew F. Kennelly to be related to 08 C 2582 which is pending on my calendar. Accordingly, I request that the Executive Committee order said case to be reassigned to my calendar as a related case.

James B. Zagel

Judge James B. Zagel

Dated: February 19, 2009

ORDER OF THE EXECUTIVE COMMITTEE

IT IS HEREBY ORDERED that the above captioned case be reassigned to the calendar of Judge James B. Zagel.

ENTER

FOR THE EXECUTIVE COMMITTEE

James F. Holderman

Chief Judge James F. Holderman

Dated: FEB 20 2009

FILED
2009 FEB 20 PM 3:47
U.S. DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

**United States District Court
Northern District of Illinois**

*Judge
Zagel*

SH

In the Matter of

FREDERICK J. GREDE

v.

FARR FINANCIAL, INC

Case No. 09 C 120

Designated Magistrate Judge
~~Adelander-Kay~~ Schenkier

**FINDING OF RELATEDNESS PURSUANT TO
LOCAL RULE 40.4**

In accordance with the provisions of Local Rule 40.4 of this Court, I find the above captioned case, presently pending on the calendar of Judge Matthew F. Kennelly to be related to 08 C 2582 which is pending on my calendar. Accordingly, I request that the Executive Committee order said case to be reassigned to my calendar as a related case.

James B. Zagel

Judge James B. Zagel

Dated: February 19, 2009

ORDER OF THE EXECUTIVE COMMITTEE

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FOR THE EXECUTIVE COMMITTEE

James F. Holderman

Chief Judge James F. Holderman

Dated: **FEB 20 2009**

FILED
2009 FEB 20 PM 3:47
U.S. DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

**United States District Court
Northern District of Illinois**

*Judge
Zagel* *CM*

In the Matter of

FREDERICK J. GREDE

v.

CADENT FINANCIAL, ET AL

Case No. 09 C 127

Designated Magistrate Judge
Aslander Keys Schenkier

**FINDING OF RELATEDNESS PURSUANT TO
LOCAL RULE 40.4**

In accordance with the provisions of Local Rule 40.4 of this Court, I find the above captioned case, presently pending on the calendar of Judge Matthew F. Kennelly to be related to 08 C 2582 which is pending on my calendar. Accordingly, I request that the Executive Committee order said case to be reassigned to my calendar as a related case.

James B. Zagel

Judge James B. Zagel

Dated: February 19, 2009

ORDER OF THE EXECUTIVE COMMITTEE

IT IS HEREBY ORDERED that the above captioned case be reassigned to the calendar of Judge James B. Zagel.

ENTER

FOR THE EXECUTIVE COMMITTEE

James F. Holderman

Chief Judge James F. Holderman

Dated: **FEB 20 2009**

FILED
2009 FEB 20 PM 3:47
U.S. DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

**United States District Court
Northern District of Illinois**

*Judge
Zagel*

GH

In the Matter of

FREDERICK J. GREDE

v.

Case No. 09 C 128

RAND FINANCIAL SERVICES, INC

Designated Magistrate Judge
~~Arlander Keyes~~ Schenkier

**FINDING OF RELATEDNESS PURSUANT TO
LOCAL RULE 40.4**

In accordance with the provisions of Local Rule 40.4 of this Court, I find the above captioned case, presently pending on the calendar of Judge Matthew F. Kennelly to be related to 08 C 2582 which is pending on my calendar. Accordingly, I request that the Executive Committee order said case to be reassigned to my calendar as a related case.

James B. Zagel

Judge James B. Zagel

Dated: February 19, 2009

ORDER OF THE EXECUTIVE COMMITTEE

IT IS HEREBY ORDERED that the above captioned case be reassigned to the calendar of Judge James B. Zagel.

ENTER

FOR THE EXECUTIVE COMMITTEE

James F. Holderman
Chief Judge James F. Holderman

Dated: FEB 20 2009

FILED-09
2009 FEB 20 PM 3:47
U.S. DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

**United States District Court
Northern District of Illinois**

*Judge
Zagel*

CA

In the Matter of

FREDERICK J. GREDE

v.

Case No. 09 C 130

COUNTRY HEDGING, INC.

Designated Magistrate Judge
Arlander Keys *Schenkier*

**FINDING OF RELATEDNESS PURSUANT TO
LOCAL RULE 40.4**

In accordance with the provisions of Local Rule 40.4 of this Court, I find the above captioned case, presently pending on the calendar of Judge Matthew F. Kennelly to be related to 08 C 2582 which is pending on my calendar. Accordingly, I request that the Executive Committee order said case to be reassigned to my calendar as a related case.

James B. Zagel

Judge James B. Zagel

Dated: February 19, 2009

ORDER OF THE EXECUTIVE COMMITTEE

IT IS HEREBY ORDERED that the above captioned case be reassigned to the calendar of Judge James B. Zagel.

ENTER

FOR THE EXECUTIVE COMMITTEE

James F. Holderman

Chief Judge James F. Holderman

Dated: FEB 20 2009

United States District Court
Northern District of Illinois

Judge
Zagel

In the Matter of

FREDERICK J. GREDE

v.

Case No. 09 C 134

PEREGRINE FINANCIAL GROUP

Designated Magistrate Judge
~~Arlander Koye~~ Schenkier

FINDING OF RELATEDNESS PURSUANT TO
LOCAL RULE 40.4

In accordance with the provisions of Local Rule 40.4 of this Court, I find the above captioned case, presently pending on the calendar of Judge Matthew F. Kennelly to be related to 08 C 2582 which is pending on my calendar. Accordingly, I request that the Executive Committee order said case to be reassigned to my calendar as a related case.

James B. Zagel

Judge James B. Zagel

Dated: February 19, 2009

ORDER OF THE EXECUTIVE COMMITTEE

IT IS HEREBY ORDERED that the above captioned case be reassigned to the calendar of Judge James B. Zagel.

ENTER

FOR THE EXECUTIVE COMMITTEE

James F. Holdeman

Chief Judge James F. Holderman

Dated: FEB 20 2009

**United States District Court
Northern District of Illinois**

*Judge
Zagel* *GH*

In the Matter of

FREDERICK J. GREDE

v.

AMERICAN NATIONAL TRADING

Case No. 09 C 137

Designated Magistrate Judge
~~Arlander Kaye~~ Schenkier

**FINDING OF RELATEDNESS PURSUANT TO
LOCAL RULE 40.4**

In accordance with the provisions of Local Rule 40.4 of this Court, I find the above captioned case, presently pending on the calendar of Judge Matthew F. Kennelly to be related to 08 C 2582 which is pending on my calendar. Accordingly, I request that the Executive Committee order said case to be reassigned to my calendar as a related case.

James B. Zagel

Judge James B. Zagel

Dated: February 19, 2009

ORDER OF THE EXECUTIVE COMMITTEE

IT IS HEREBY ORDERED that the above captioned case be reassigned to the calendar of Judge James B. Zagel.

ENTER

FOR THE EXECUTIVE COMMITTEE

James F. Holderman

Chief Judge James F. Holderman

Dated: FEB 20 2009

**United States District Court
Northern District of Illinois**

*Judge
Zagel* *at*

In the Matter of

FREDERICK J. GREDE

v.

Case No. 09 C 138

FORTIS CLEARING AMERICAS

Designated Magistrate Judge
~~Arlander Keys~~ *Schenkier*

**FINDING OF RELATEDNESS PURSUANT TO
LOCAL RULE 40.4**

In accordance with the provisions of Local Rule 40.4 of this Court, I find the above captioned case, presently pending on the calendar of Judge Matthew F. Kennelly to be related to 08 C 2582 which is pending on my calendar. Accordingly, I request that the Executive Committee order said case to be reassigned to my calendar as a related case.

James B. Zagel

Judge James B. Zagel

Dated: February 19, 2009

ORDER OF THE EXECUTIVE COMMITTEE

IT IS HEREBY ORDERED that the above captioned case be reassigned to the calendar of Judge James B. Zagel.

ENTER

FOR THE EXECUTIVE COMMITTEE

James F. Holderman

Chief Judge James F. Holderman

Dated: **FEB 20 2009**

2009 FEB 20 PM 3:47
U.S. DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

**United States District Court
Northern District of Illinois**

*Judge
Zagel* CH

In the Matter of

FREDERICK J. GREDE

v.

CROSSLAND, LLC

Case No. 09 C 140

Designated Magistrate Judge
~~Arlander Keys~~ *Schenkier*

**FINDING OF RELATEDNESS PURSUANT TO
LOCAL RULE 40.4**

In accordance with the provisions of Local Rule 40.4 of this Court, I find the above captioned case, presently pending on the calendar of Judge **Matthew F. Kennelly** to be related to 08 C 2582 which is pending on my calendar. Accordingly, I request that the Executive Committee order said case to be reassigned to my calendar as a related case.

James B. Zagel

Judge James B. Zagel

Dated: February 19, 2009

ORDER OF THE EXECUTIVE COMMITTEE

IT IS HEREBY ORDERED that the above captioned case be reassigned to the calendar of Judge **James B. Zagel**.

ENTER

FOR THE EXECUTIVE COMMITTEE

James F. Holdeman

Chief Judge James F. Holdeman

Dated: **FEB 20 2009**

**United States District Court
Northern District of Illinois**

In the Matter of

Grede

v.

TradeMaven Clearing LLC

Case No. 09 C 3863

Designated Magistrate Judge
Sidney I. Schenkier

**FINDING OF RELATEDNESS PURSUANT TO
LOCAL RULE 40.4**

In accordance with the provisions of Local Rule 40.4 of this Court, I find the above captioned case, presently pending on the calendar of Judge **Ronald A. Guzman** to be related to **08 C 2582** which is pending on my calendar. Accordingly, I request that the Executive Committee order said case to be reassigned to my calendar as a related case.


Judge James B. Zagel

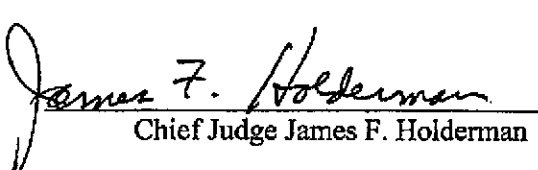
Dated: July 16, 2009

ORDER OF THE EXECUTIVE COMMITTEE

IT IS HEREBY ORDERED that the above captioned case be reassigned to the calendar of Judge **James B. Zagel**.

ENTER

FOR THE EXECUTIVE COMMITTEE


Chief Judge James F. Holderman

Dated: 7/17/09

**United States District Court
Northern District of Illinois**

*Judge
Zagel* BB

In the Matter of

SENTINEL MANAGEMENT GROUP, INC.

v.

F C STONE LLC

Case No. 09 C 136

Designated Magistrate Judge
Sidney I. Schenkier

**FINDING OF RELATEDNESS PURSUANT TO
LOCAL RULE 40.4**

In accordance with the provisions of Local Rule 40.4 of this Court, I find the above captioned case, presently pending on the calendar of Judge Matthew F. Kennelly to be related to 08 C 2205 which is pending on my calendar. Accordingly, I request that the Executive Committee order said case to be reassigned to my calendar as a related case.

James B. Zagel

Judge James B. Zagel

Dated: March 23, 2009

ORDER OF THE EXECUTIVE COMMITTEE

IT IS HEREBY ORDERED that the above captioned case be reassigned to the calendar of Judge James B. Zagel.

ENTER

FOR THE EXECUTIVE COMMITTEE

James F. Holderman

Chief Judge James F. Holderman

Dated: MAR 24 2009